

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Respondent,

No. CR S-93-233 GEB GGH P

vs.

GERARD GALLANT,

Movant.

ORDER

On July 13, 2007, movant filed a motion for sentence reduction pursuant to 18 U.S.C. § 3582 (# 221). This motion was erroneously docketed as a motion pursuant to 28 U.S.C. § 2255. On June 6, 2008, movant filed a motion pursuant to 28 U.S.C. § 2255 (# 227). On June 25, 2008, movant filed an amended motion pursuant to 28 U.S.C. § 2255 (# 228).

On June 30, 2008, this court ordered the motions brought pursuant to 28 U.S.C. § 2255 (# 227 and # 228) stricken because movant had not properly sought the court's leave to make these serial filings. Movant has now appealed this order. See Ninth Circuit case no. 08-17184.

The June 30, 2008, order was based on a mistaken apprehension that movant had previously filed a § 2255 motion. As discussed above, the July 13, 2007, motion, erroneously docketed as a § 2255 motion, was actually brought pursuant to 18 U.S.C. § 3582.

1 Following the Ninth Circuit's consideration of movant's appeal, this court intends  
2 to vacate the June 30, 2008, order and allow movant to proceed with his amended § 2255 motion.  
3 The court will also order the docket corrected to reflect that the July 13, 2007, motion was  
4 brought pursuant to 18 U.S.C. § 3582.

5 Accordingly, IT IS HEREBY ORDERED that the Clerk of the Court is directed to  
6 serve a copy of this order on the Ninth Circuit Court of Appeals in Case Number 08-17184.

7 DATED: 10/21/08

/s/ Gregory G. Hollows

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9 UNITED STATES MAGISTRATE JUDGE

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